

EDUCATION

STATE BOARD OF EDUCATION

Student Residency

Proposed Readoption with Amendments: N.J.A.C. 6A:22

Authorized By: New Jersey State Board of Education, Kimberley Harrington, Acting Commissioner, Acting Secretary.

Authority: N.J.S.A. 18A:38-1.1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-203.

Submit written comments by February 17, 2017, to:

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The agency proposal follows:

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:22, Student Residency, with amendments.

In accordance with the New Jersey State Constitution, Article VIII, Section IV, Paragraph 1, the Legislature established a system of free public schools for all children in the

State. Through N.J.S.A. 18A:38-1, the Legislature provided for students to attend school in a particular school district based upon domicile, residency, or “affidavit student” status (living with and supported by a person other than the parent or guardian for reasons not related to attending school). From their inception, the implementing rules for N.J.S.A. 18A:38-1 have sought to maintain the balance intended by the statute, which is to deter attempts to attend school in a particular school district where there is no lawful entitlement to do so, while recognizing, as paramount, a student's right to free public education.

Chapter 22 was recodified from N.J.A.C. 6A:28-2, Entitlement to Attend School Based on Domicile or Residency in District, effective October 4, 2004. The chapter was readopted effective December 22, 2009. Pursuant to N.J.S.A. 52:14B-5.1, the current rules were scheduled to expire on December 22, 2016. As the Department submitted this notice of proposal to the Office of Administrative Law (OAL) prior to that date, the expiration date is extended 180 days to June 20, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

In January 2016, P.L. 2016, c. 269, was enacted to permit certain children of military members to remain in their school district of residence when their parent or guardian is ordered into active duty (N.J.S.A. 18A:38-3.1). Since the chapter currently covers the new law’s provisions, the Department proposes only to add a reference to the new law wherever applicable existing law is referenced.

The following provides an overview of the rules proposed for re adoption:

Subchapter 1. Purpose, Scope, and Definitions

N.J.A.C. 6A:22-1.1 Purpose and scope

This section cites the statutes that authorize the chapter’s rules. The section also states the chapter does not address, other than by reference to applicable statutes and rules, attendance at

school by nonresidents, children of certain military parents, children residing on Federal property, or persons who qualify for attendance as homeless students. The section also states the rules apply to all students between five and 20 years of age and to younger or older students otherwise entitled by law to free public education. The section also states the chapter's provisions are to be liberally construed to effectuate a student's constitutional and statutory right to a free public education.

The Department proposes an amendment to add "and 18A:38-3.1" at the end of "children of certain military parents (N.J.S.A. 18A:38-3.b)."

N.J.A.C. 6A:22-1.2 Definitions

This section provides definitions for terms used within the chapter.

Subchapter 2. District Board of Education Policies

N.J.A.C. 6A:22-2.1 Adoption by district board of education

This section requires each district board of education to adopt written policies and procedures incorporating the chapter's requirements and to make copies available to parents and the public.

N.J.A.C. 6A:22-2.2 Discretionary admission of nonresident students

This section states that nothing in the chapter is to be construed to limit a district board of education's discretion to admit nonresident students with or without payment of tuition, pursuant to N.J.S.A. 18A:38-3.a.

Subchapter 3. Eligibility to Attend School

N.J.A.C. 6A:22-3.1 Students domiciled within the school district

This section authorizes a student to attend a school district if he or she is domiciled within the school district, and further defines what it means to be domiciled. The section

addresses the many living situations that students may present upon applying for enrollment in a school district.

N.J.A.C. 6A:22-3.2 Other students eligible to attend school

This section establishes specific criteria for school attendance for students who are not domiciled within the school district. The list includes "affidavit students" and students with temporary residency status. The section incorporates the statutory provisions for school attendance of children whose parents or guardians belong to the National Guard or United States armed forces reserves, children placed by court order in the home of a school district resident, and children residing on Federal property. The section also includes the process for a student to remain enrolled in a school district for the remainder of the year after he or she moves due to a family crisis and requires the school district to provide transportation for the student at a cost to be reimbursed by the State.

The Department proposes an amendment at N.J.A.C. 6A:22-3.2(f), which permits students to remain in a school district if they move out of the school district because a parent or guardian is a member of the New Jersey National Guard or United States reserves and has been ordered to active service in a time of war or national emergency, to include two references to the new statute, N.J.S.A. 18A:38-3.1, that allows such attendance.

N.J.A.C. 6A:22-3.3 Housing and immigration status

This section prohibits a student's eligibility to attend school from being affected by the physical condition of housing, or by the student or parents' immigration status. The section also prohibits school districts from inquiring about a student's immigration status, except for students who have obtained or are seeking a Certificate of Eligibility for Nonimmigrant Student Status

(U.S. Customs and Immigration Services (USCIS) form I-20) from the school district to apply for an F-1 visa.

N.J.A.C. 6A:22-3.4 Proof of eligibility

This section requires school districts to accept certain documents as proof of eligibility for a student to enroll in the school district. Acceptable documents include those that demonstrate residency or entitlement to enroll in the school district without residency. The section prohibits school districts from requiring information or documents otherwise protected from disclosure, such as income tax returns, Social Security numbers, compliance with housing ordinances or tenancy conditions, or immigration/visa status (except in the case of F-1 student visas). The protected information or documents may be disclosed voluntarily by an applicant.

Subchapter 4. Initial Assessment and Enrollment

N.J.A.C. 6A:22-4.1 Registration forms and procedures for initial assessment

This section requires each district board of education to use Commissioner-provided registration forms or locally developed forms that meet specified criteria. The section also requires school districts to make available sufficient numbers of registration forms and trained registration staff to ensure prompt determination and enrollment. The section further requires school districts to make initial eligibility determinations upon presentation of an enrollment application and enroll a student immediately, except in cases of clear, uncontested denials. The section further requires a school district to enroll a student immediately, if the information provided is incomplete, unclear, or questionable and to notify the applicant that the student will be removed from school if the defects in the application are not corrected or an appeal is not filed. For students who appear to be ineligible based on the information provided in the initial application, the school district shall issue a preliminary written notice of ineligibility that

includes information about the right to appeal. If enrollment is denied and no intent to appeal is indicated, the section requires applicants to be advised they must comply with compulsory education laws. The section also requires a school district to provide the student's name and address to the resident school district or the New Jersey Department of Children and Families, if a student is denied enrollment and the parent or guardian has not appealed or provided a written statement indicating the student will be receiving instruction in another school or environment.

N.J.A.C. 6A:22-4.2 Notices of ineligibility

This section requires a school district that sends a notice of ineligibility to enroll a student to include in the notification specific items to ensure the parent or guardian is aware of the reason for denial of eligibility and his or her rights and responsibilities under the law.

N.J.A.C. 6A:22-4.3 Removal of currently enrolled students

This section states nothing in the subchapter precludes a district board of education from identifying through further investigation or periodic requests for revalidation of eligibility, students enrolled in the school district who may be ineligible for continued attendance. The section also allows a chief school administrator to apply to the district board of education to remove students who are later determined to be ineligible for continued attendance. The section further requires a school district to issue a preliminary notice of ineligibility and to provide for a hearing before the district board of education prior to a student's removal.

Subchapter 5. Appeal of Ineligibility Determination

N.J.A.C. 6A:22-5.1 Appeal to the Commissioner

This section authorizes an applicant to appeal, to the Commissioner, a school district determination that a student is ineligible to attend its schools. The section also requires an appeal in the case of an affidavit student to be filed by the resident keeping the student.

Subchapter 6. Assessment and Calculation of Tuition

N.J.A.C. 6A:22-6.1 Assessment of tuition where no appeal is filed

In cases of an ineligibility determination when no appeal to the Commissioner is filed, the section authorizes the district board of education to assess tuition for up to one year of a student's ineligible attendance, including the 21-day period provided for the appeal. The section also allows the district board of education to petition the Commissioner for an order assessing tuition of the party responsible for the student tuition assessment.

N.J.A.C. 6A:22-6.2 Assessment of tuition where appeal is filed

This section allows the Commissioner to assess tuition for the period during which a hearing and decision on appeal were pending and for up to one year of a student's ineligible attendance, including the 21-day period for the appeal when an appeal is filed and either withdrawn or the student is found to be ineligible.

N.J.A.C. 6A:22-6.3 Calculation of tuition

This section requires the tuition amount to be assessed to be calculated on a per-student basis for the period of the student's ineligible enrollment, up to one year. The section also states that nothing in the chapter precludes the district board of education or Commissioner from forgiving all or part of an assessment when the particular circumstances warrant it, such as a case of school district error.

As the Department has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments govern the process for enrolling students in school, and provide school districts and parents with the process for appeals and the

assessment of tuition for students found ineligible for enrollment. The rules proposed for readoption with amendments also ensure continuity in a student's educational placement after a family crisis displaces him or her from the original school district. The rules proposed for readoption with amendments provide school districts and parents with a clear description of what is required to enroll a student in a school district. The rules proposed for readoption with amendments also ensure prompt admittance to school, so students are not denied access to public education while awaiting resolution of an eligibility status.

Economic Impact

The rules proposed for readoption with amendments require school districts to provide for a free public education for all students domiciled within the school district boundaries. Since school districts are primarily supported through local property taxes, the cost for educating resident students is generally borne by the local taxpayers and through the provision of State aid, which is determined using resident enrollment counts. A minor contribution to the economic impact is free attendance for nonresident students, which the rules authorize in limited circumstances to ensure continuity of education for students who would otherwise be required to change school districts. In total, the rules proposed for readoption with amendments provide an orderly process for determining student eligibility for free attendance and limits a school district's exposure to unwarranted costs.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules proposed for readoption with amendments; therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will result in neither the generation nor loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments impact solely on New Jersey public schools.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing or the number of housing units in the State. The rules proposed for readoption with amendments relate to standards and procedures for student enrollment.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The rules proposed for readoption with amendments relate to standards and procedures for student enrollment.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6A:22.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

6A:22-1.1 Purpose and scope

(a) The rules in this chapter have been adopted to implement N.J.S.A. 18A:38-1.a through e. Other than by reference to the applicable statutes and rules, the chapter does not address attendance at school by nonresidents (N.J.S.A. 18A:38-3.a); children of certain military parents (N.J.S.A. 18A:38-3.b **and 18A:38-3.1**); children residing on Federal property (N.J.S.A. 18A:38-7.7 et seq.); or persons qualifying under N.J.S.A. 18A:38-1.f, which provides for attendance by homeless students and is implemented through N.J.A.C. 6A:17-2, Education of Homeless Children.

(b) - (c) (No change.)

SUBCHAPTER 3. ELIGIBILITY TO ATTEND SCHOOL

6A:22-3.2 Other students eligible to attend school

(a) – (e) (No change.)

(f) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-3.b **and 18A:38-3.1** if the student previously resided in the school district and if the parent or guardian is a member of the New Jersey National Guard or the United States reserves and has been ordered to active service in time of war or national emergency, resulting in the relocation of the student

out of the school district. A school district admitting a student pursuant to N.J.S.A. 18A:38-3.b
and 18A:38-3.1 shall not be obligated for transportation costs.

(g) - (h) (No change.)